

PHILIP A. CRAMER

IBLA 82-1280

Decided June 21, 1983

Appeal from decision of Idaho State Office, Bureau of Land Management, declaring all or portions of mining claims null and void ab initio. I MC-67064, et al.

Affirmed.

1. Mining Claims: Lands Subject To -- Mining Claims: Withdrawn Land
-- Withdrawals and Reservations: Effect of

A mining claim located on land after the land was segregated and closed to mineral entry by notation of receipt of an application for withdrawal is properly declared null and void ab initio.

2. Administrative Procedure: Hearings -- Constitutional Law: Due Process -- Rules of Practice: Hearings

Due process does not require notice and a right to a prior hearing in every case where an individual may be deprived of property so long as the individual is given notice and an opportunity to be heard before the deprivation becomes final.

APPEARANCES: Claude Marcus, Esq., Boise, Idaho, for appellant.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Philip A. Cramer has appealed from a decision of the Idaho State Office, Bureau of Land Management (BLM), dated July 16, 1982, declaring all or portions of his nine mining claims, I MC-67064 through I MC-67072, null and void ab initio because they were located on land withdrawn from mineral entry. 1/

1/ Appellant's mining claims and the extent to which they are affected by the July 1982 decision are listed as follows:

I MC-67064	Marjorie	Portion w/in sec. 6, T. 5 S., R. 3 W.
I MC! 67065	Ruby	Portion w/in sec. 6, T. 5 S., R. 3 W.

Appellant located his mining claims on August 1, 1981, and filed them for recordation with BLM on October 26, 1981. In addition, appellant filed maps which located the claims in relation to section, township, and range of the public land surveys, presumably in accordance with 43 CFR 3833.1-2(c)(5). According to these maps, the claims are situated in sec. 31 and sec. 32., T. 4 S., R. 3 W., and sec. 5 and sec. 6, T. 5 S., R. 3 W., Boise meridian, Owyhee County, Idaho. In its July 1982 decision, BLM rejected all or portions of appellant's mining claims because the land was "segregated from mineral entry on August 30, 1974," and was not open to location on August 1, 1981.

In his statement of reasons for appeal, appellant contends that BLM improperly interpreted the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1701 (1976). In the alternative, appellant argues that the declaration of his mining claims as null and void constitutes "an unconstitutional taking of private property without due process."

[1] The record establishes that on the date appellant located his mining claims, August 1, 1981, portions of sec. 31, T. 4 S., R. 3 W., and sec. 6, T. 5 S., R. 3 W., Boise meridian, Owyhee County, Idaho, were subject to an outstanding application for a withdrawal (I-8856). 2/ The application was initiated August 30, 1974, and notice thereof was published in the Federal Register, which provided for withdrawal of the land "from location and entry under the mining laws." 39 FR 38243 (Oct. 30, 1974). The withdrawal application was officially noted on the BLM land status plats in 1974. The noting of the application temporarily segregated the land from location under the mining laws to the extent that the withdrawal, if effected, would do so. 43 CFR 2091.2-5(a) (1974). Moreover, under the current regulations, land described in a withdrawal application filed before October 21, 1976, the date of passage of FLPMA, supra, and still outstanding, "shall remain segregated through October 20, 1991, from settlement, sale, location or entry under the public land laws, including the mining laws, to the extent specified in the Federal Register notice or notices that pertain to the application." 43 CFR 2310.2(b). The regulation was promulgated in accordance with section 204(g) of FLPMA, 43 U.S.C. § 1714(g) (1976). 3/

fn. 1 (continued)

I MC-67066	Belle Stoddard	Portion w/in sec. 6, T. 5 S., R. 3 W.
I MC! 67067	Home Fraction	All
I MC! 67068	Roosevelt	All
I MC-67069	Home	All
I MC-67070	Western Star	All
I MC-67071	White Rat	Portions w/in sec. 6, T. 5 S., R. 3 W., and sec. 31, T. 4 S., R. 3 W.
I MC-67072	Mary Ann	All

2/ The application for withdrawal specifically affected the following described land, aggregating 522.67 acres in Owyhee County, Idaho: "Boise Meridian, Idaho, T. 4 S., R. 3 W., Section 31, Lots 4, 5, W 1/2 NE 1/4 SE 1/4, E 1/2 NW 1/4 SE 1/4. T. 5 S., R. 3 W., Section 6, Lots 8, 11, 12, 17, 18, 19, 20, 27, SE 1/4 NW 1/4, E 1/2 SE 1/4." 39 FR 38243 (Oct. 30, 1974).

3/ Section 204(g) of FLPMA, supra, provides: "All applications for withdrawal pending on October 21, 1976, shall be processed and adjudicated to conclusion within fifteen years of October 21, 1976, in accordance with the provisions of this section. The segregative effect of any application not so processed shall terminate on that date."

BLM has provided a copy of the current land status plats, which indicate that the withdrawal application has not been canceled and was, thus, outstanding on August 1, 1981, the date of location. We have held that a mining claim located on land segregated from mineral entry at the time of location by notation of an application for withdrawal in the official BLM records is properly declared null and void ab initio. J. Pat Kaufman, 71 IBLA 183 (1983); Lester M. Holt, 69 IBLA 180 (1982).

[2] Appellant has not explained how BLM has misinterpreted FLPMA and we can discern no misinterpretation. Furthermore, appellant is not correct in his contention that declaring his mining claims null and void constitutes an unconstitutional taking. Due process does not require notice and a right to a prior hearing in every case where a person is deprived of an asserted property right so long as the individual is given notice and an opportunity to be heard before the initial BLM decision, adverse to him, becomes final. Appeal to this Board satisfies the due process requirements. Madison D. Locke, 65 IBLA 122 (1982); George H. Fennimore, 50 IBLA 280 (1980); Dorothy Smith, 44 IBLA 25 (1979). Moreover, where the BLM records show that land embraced by a mining claim was not open to mining location at the time of the attempted location, a hearing is not required to establish the invalidity of the claims. Sherman C. Smith, 58 IBLA 188, 190 (1981) and cases cited therein.

There is some question in this case as to the exact location of appellant's mining claims and the extent to which they are affected by the application for withdrawal. BLM has apparently relied on appellant's handdrawn map in determining the location of the claims. In its July 1982 decision, BLM recognized that "[t]he legal descriptions given on Location Notices do not include sections, townships or ranges." Therefore, the only thing that identifies the mining claims in relation to the public land surveys is the map. The application for withdrawal does not apply to all of sec. 31, T.4 S., R. 3 W., or sec. 6, T. 5 S., R. 3 W., Boise meridian, Idaho. However, by using the dimensions of the mining claims, as set forth in the notices of location, it can be ascertained that, to the extent the claims are within secs. 6 and 31, they are affected by the application for withdrawal. Accordingly, BLM properly declared all or portions of appellant's mining claims null and void ab initio.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Gail M. Frazier
Administrative Judge

We concur:

Bruce R. Harris
Administrative Judge

Edward W. Stuebing
Administrative Judge